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Attorneys for Defendant Ernst & Young LLP

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

DANIEL MCCABE, RUSSELL E. MCCABE,  
and DAVID MOTovidlak,

Plaintiffs,

-against-

ERNST & YOUNG, LLP, NICHOLAS R. H.  
TOMS a/k/a NIC TOMS, HUGO BIERMANN,  
GREGORY THOMAS, EDWARDSTONE &  
COMPANY, INC., WAYNE CLEVINGER,  
JOSEPH ROBINSON, MIDMARK CAPITAL,  
LP, OTTO LEISTNER, BUNTER B.V.I., LTD.,  
GEORGE POWCH, STEPHEN M. DUFF, THE  
CLARK ESTATES, INC., RAYMOND BROEK,  
DONALD ROWLEY, DOUGLAS L. DAVIS,  
BARBARA H. MARTORANO and JACQUI  
GERRARD,

Defendants.

Hon. William H. Walls

Case No. 01-CIV-5747 (WHW)

**NOTICE OF DEFENDANT ERNST &  
YOUNG LLP'S MOTION FOR  
SUMMARY JUDGMENT ON THE  
SECOND AND FIFTH COUNTS OF  
THE AMENDED COMPLAINT**

Return Date: May 24, 2004  
9:00 a.m.

Document electronically filed

TO: Clerk of the Court  
All Counsel of Record

PLEASE TAKE NOTICE that, upon Defendant Ernst & Young LLP's Memorandum of  
Law in Support of Its Motion for Summary Judgment, Defendant Ernst & Young LLP, by its

undersigned attorneys, will move this Court before the Honorable William H. Walls on May 24, 2004 at 9:00 a.m., or as soon thereafter as counsel may be heard, at the United States Courthouse, 50 Walnut Street, Newark, New Jersey, for an Order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting summary judgment on the ground that there is no genuine issue of fact and that Ernst & Young LLP is entitled to judgment as a matter of law dismissing the Second and Fifth Counts of Plaintiffs' Amended Complaint with prejudice and granting such further relief as this Court may deem just and proper.

By: /s Holly Kulka  
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